

UNITED STATES TAX COURT
WASHINGTON, DC 20217

EATON CORPORATION AND SUBSIDIARIES,)
)
 Petitioner(s),)
)
 v.) Docket No. 5576-12.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On December 22, 2014, petitioner filed a motion to compel deposition testimony. Petitioner makes its motion pursuant to Rule 104(b)¹ to compel the continuation of the depositions of Patricia Lacey and John Hinding. On January 20, 2015, respondent filed a response to petitioner's motion. Petitioner contends that respondent instructed the deponents not to answer petitioner's questions regarding the facts and grounds supporting cancellation of two advance pricing agreements (APAs).

Respondent contends that respondent's objections to the deposition questions were made to protect privileged and work product information. Respondent has provided petitioner with a December 5, 2011, memorandum (which addresses reasons for canceling the APAs), redacted only for opinion work product.

Rule 74(c)(1)(B) provides that a deposition is "an extraordinary method of discovery and may be used only where a party, a nonparty witness, or an expert witness can give testimony or possesses documents, electronically stored information, or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, electronically stored information, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)), interrogatories (Rule 71), a request for production of documents, electronically stored information, or things (Rule 72), or by a deposition taken with consent of the parties (Rule 74(b))."

Petitioner has already had the opportunity to depose Ms. Lacey and Mr. Hinding. During these depositions deponents were instructed not to answer questions on the grounds responses would have resulted in providing privileged information. See Rule 70(b)(1) (the information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the case).

¹All Rule references are to the Tax Court Rules of Practice and Procedure.

Upon due consideration, it is

ORDERED that petitioner's motion to compel deposition testimony is denied.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
January 22, 2015